

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Joseph Gamester

v.

Civil No. 10-cv-115-JL

John Eppolito et al.¹

ORDER

Before the Court is pro se plaintiff Joseph Gamester's motion to amend the complaint (doc. no. 14). Defendant Dr. John Eppolito has been served and has appeared through counsel (doc. nos. 8 and 15). The motion to amend (doc. no. 14) remains unopposed at this time.

A plaintiff has the right to amend the complaint once as a matter of course within 21 days of serving it. See Fed. R. Civ. P. 15(a)(1). The motion for a preliminary injunction (doc. no. 1) was previously construed to be the complaint in this case. See Report and Recommendation (doc. no. 4). The proposed amendment (doc. no. 14) was served less than 21 days after service of the original complaint and motion for a preliminary


¹In addition to Dr. John Eppolito, the complaint (doc. no. 1) names the New Hampshire State Prison ("NHSP") Medical Department and Corrections Officer Ernest Orlando as defendants. I have previously recommended dismissal of the NHSP Medical Department in this case. See Report and Recommendation (doc. no. 4). Gamester made an oral motion to withdraw his claims against defendant Orlando during the preliminary injunction hearing on April 29, 2010, and, upon Orlando's concurrence, I granted the motion.

injunction (doc. no. 1).

Gamester testified in the evidentiary hearing on the motion for a preliminary injunction that another inmate prepared the original complaint for him while he was too sick to do so. The proposed amendment, prepared before the evidentiary hearing, restates Gamester's allegations in his own words. Consistent with my granting Gamester's oral motion to withdraw his claims against defendant Sgt. Ernest Orlando during the preliminary injunction hearing on April 29, 2010, the proposed amendment is construed to include claims against Dr. Eppolito only.

Therefore, pursuant to Fed. R. Civ. P. 15(a) and for good cause shown, I hereby grant the motion to amend the complaint (doc. no. 14), and construe the document entitled "Motion to Amend Background Event" to constitute the proposed amendment. Dr. Eppolito shall file a response to the allegations set forth in the amended complaint within 14 days, pursuant to Fed. R. Civ. P. 15(a)(3).

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: May 24, 2010

cc: Joseph Gamester, pro se
Edward M. Kaplan, Esq.
Matthew G. Mavrogeorge, Esq.

JRM:nmd